

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1029 of 1999

in

SPECIAL CIVIL APPLICATION No 5048 of 1999

with

CIVIL APPLICATION NO. 7579 OF 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SHAHVADI POTATO GROWERS CO OP MULTI PURPOSE SOCIETY LTD

Versus

SANJAYBHAI BHAVSAR

Appearance:

MR N.D.NANAVATI WITH HARIN P RAVAL for Appellant
MR K.G.VAKHARIA WITH MS AVANI S MEHTA for Respondent No. 5
MR S.N.SHELAT, ADDL.ADVOCATE GENERAL FOR STATE
AUTHORITIES

CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and
MR.JUSTICE K.M.MEHTA

Date of decision: /12/1999

CAV JUDGEMENT

Per Thakker,Actg. C.J.:

This appeal is filed against summary dismissal of SCA No. 5048 of 1999 by the learned Single Judge on July 24, 1999.

The appellant was the original petitioner. It filed the above petition for an appropriate writ, direction or order quashing and setting aside the action of respondent No.1 Returning Officer,Ahmedabad District Coop.Bank Ltd. and City Deputy Collector, Ahmedabad (rural), deleting the name of the petitioner society from the constituency of Multi Purpose Agriculture and Seva Sahkari Mandali of City taluka of Ahmedabad Dist. Co-op.Bank Limited and in placing it in the final list of voters in residuary category of societies.

The case of the petitioner society was that in accordance with the provisions of the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as 'the Act') , the petitioner was registered as affiliated to Ahmedabad Dist. Coop.Bank Limited , a specified society within the meaning of Section 74-C of the Act. The said bank framed bye-laws which have been approved by the Registrar. Bye-law 8 provided that administration of the bank shall be conducted by Board of Directors/ Managing Committee which would be elected from different constituencies. 14 Directors were to be elected from Agricultural Vividh Karyakari and Seva Sahkari Societies. Name of the petitioner society was included in the said constituency treating it as Agriculture and Multi Purpose Society. It was asserted by the petitioner society that it was primary agricultural society and was accordingly registered under that head. It appears that one Ranchhodbhai Desai, MLA from Vagdod constituency, district- Banaskantha who was neither a member nor a voter in the constituency raised an objection that the petitioner society could not have been placed under the head Aariculture and Multi Purpose society and that it could have been placed only under residuary society i.e. Itar Mandali. According to the petitioner, even though said Ranchhodbhai Desai had no locus to raise such objection and at whose instance no objection could have been entertained, a decision was taken by the Returning Officer upholding the objection of Mr. Ranchhodbhai Desai placed the petitioner society under the head of residuary society. The said order was illegal and hence, it was challenged by filing the above petition.

When the matter was placed before the learned Single

Judge, a preliminary objection was raised on behalf of the authorities as also on behalf of respondent No.4 that the petition filed by the petitioner society was not maintainable and it would be open to the petitioner to file an election petition after the election would be over. So far as respondent No.4 was concerned, it was submitted that no relief was sought against him and he was wrongly joined as party-respondent.

Learned Single Judge, after hearing the parties, held that having regard to the facts and circumstances of the case, he would not be justified in exercising extraordinary powers under Article 226 of the Constitution of India interfering with the decision of the returning officer placing a particular society in one category and not in the other category. In the opinion of the learned Single Judge, in view of rival contentions of the parties, it could not be said that the case was of an exceptional nature which would warrant grant of relief under Article 226 of the Constitution. According to the learned Single Judge, the contention of the respondents was well founded that after election would be over, it would be open to the petitioner to approach election tribunal by filing an election petition.

We have heard Mr. N.D.Nanavati, senior advocate with Mr. Harin Raval for the appellant, Mr. S.N.Shelat, Additional Advocate General for the authorities and Mr. K.G,Vakharia , senior advocate with Avni Mehta for the contesting respondents.

Mr. Nanavati strenuously contended that when respondent No.3 had no locus standi to raise an objection , at his instance, objection could not have been entertained and no order could have been passed by the first respondent. He submitted that locus standi goes to the root of the matter and once it is established that the said respondent could not be said to be an aggrieved party nor he could move the first respondent against placing the petitioner society under a particular head, the order passed or action taken pursuant to such objection could not be said to be in accordance with law. He, therefore, submitted that the order deserves to be quashed and set aside .

He also submitted that there is error apparent on the face of record committed by the first respondent in not considering an important and material fact in its proper perspective that the petitioner was registered under the head " Agriculture and Multi Purpose Society" and it was a primary society. No circumstances were changed

thereafter. In these circumstances, it was not open to respondent No.1 to change the status of the petitioner society and the order deserves to be quashed and set aside.

He also argued that the learned Single Judge ought to have considered the above fact and ought to have exercised powers under Article 226 and by not doing so, a jurisdictional error has been committed by him.

Mr. Nanavati further submitted that what was required to be seen by the first respondent was to read the provisions of the Act. Once a society is registered in accordance with the provisions of the Act and placed under a particular category, it was not open to the Returning Officer to change the category as the said power is conferred by the Act only on the Registrar and it was not open to the Returning Officer or Deputy Collector to correct it. He, therefore, submitted that LPA deserves to be admitted and interim relief deserves to be granted.

Mr Shelat and Mr. Vakharia, for the respondents on the other hand, supported the order passed by the learned Single Judge.

In the facts and circumstances of the case, in our opinion, it cannot be said that by dismissing the petition on the ground that this was not a fit case to exercise extraordinary powers and that it was open to the petitioner to approach election tribunal after the election would be over, the learned Single Judge has committed any error of law and/or of jurisdiction.

In our opinion, the learned Single Judge was also right in observing that the question sought to be raised by the petitioner cannot be said to be pure question of law unconnected with facts. May be that the action taken by the first respondent may not be finally upheld by the appropriate authority under the Act. But at the same time, it cannot be said that the first respondent had no power, authority or jurisdiction to take such decision. In the instant case, the question was as to under which category, the petitioner society could be placed. In our opinion, so far as that question is concerned, it was within the power, authority and jurisdiction of respondent no.1 to decide the same and accordingly, it was decided. Legality or validity of such decision cannot be challenged under Article 226 of the Constitution and that too, at this stage. Hence, by not interfering with the said order, learned Single Judge has not committed any

error of law and/or or jurisdiction.

For the foregoing reasons, LPA deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to cost. No order on civil application.

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